2502

SUPREME COURT OF THE UNITED STATES.

No. 212.

THE UNITED STATES, APPELLANTS,

vs.

JOSEPH GRAFTON AND WIFE.

APPEAL FROM THE DISTRICT COURT, U. S., FOR THE EASTERN DISTRICT OF LOUISIANA.

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[GIDEON, Print.]

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UNITED STATES OF AMERICA,
Eastern district of Louisiana.

United States district court.

JOSEPH GRAFTON and WIFE
vs.
THE UNITED STATES. } No. 29 of land causes.

Be it remembered, that, on the twelfth day of June, A. D. 1846, Joseph Grafton and wife, by their attorneys and solicitors, J. W. Gurley and Thomas G. Morgan, came into the office of the clerk of said court, (then the United States district court, for the district of Louisiana,) and under the act of June 17th, 1844, there caused to be filed, in the words following, their

Petition.

To the honorable the judge of the United States district court, in and for the district and State of Louisiana.

The petition of Joseph Grafton and of Anna M. Gurley Grafton, his wife, both citizens of, and residing in, the State of Massachusetts, respectfully represents, that your petitioner, Anna M. Gurley Grafton, is the only legitimate child, and the sole heir and legal representative of her father, John Ward Gurley, late of the Territory of Orleans, now State of Louisiana, deceased; that, at the death of her said father, he was the true and legal owner of two certain tracts of land, situate in the now State of Louisiana, the one containing forty thousand superficial acres, and the other containing five hundred and sixty and one-half superficial arpens; both of which said tracts will be hereinafter more fully set forth and described. That each of said tracts of land are embraced in and form a portion of a grant or concession of twelve leagues square, with the limits, metes, and bounds, as marked, fixed, and defined in the figurative plan, marked (A,) hereunto annexed as part of this petition, legally made or granted by two several decrees, dated on or about the 21st June, 1795, and 20th June, 1796, made and issued by the proper authorities under the Spanish Government, to wit, by the Baron de Carondelet, governor general, &c., of the province of Louisiana, then under the dominion of the crown of Spain, *to the Baron de Carondelet, governor general, &c., of the province of Louisiana, then under the dominion of the crown of Spain,* to the Baron de Bastrop, who, at that period, was a resident of said province; which said grant was protected and secured by the treaty between the United States of America and the French Republic, concluded on the 30th day of April, 1803, and which might have been perfected unto a complete title under, and in conformity to, the laws, usages, and cus-

toms of the government under which the same originated, had not the sovereignty of the country been transferred to the U. States. The said two several tracts of land became the property of your petitioner's father, by a regular series of sales or conveyances from the original grantee, the Baron de Bastrop, all and singular of which are good and valid in law, and will be produced on the trial of this cause, or sooner if required. The first and larger of the aforesaid tracts of land, so claimed by your petitioner, lies on both sides of the river of Beef, (or bayou Bœuff,) being partly in each of the now parishes of Morehouse and Carrol, and contains forty thousand superficial acres; all which is fully described and designated by its metes and bounds in the plat of survey marked B, hereto annexed, for reference as part of this petition. The second and smaller of the aforesaid tracts of land herein claimed by your petitioner, *his* entirely within the parish of Ouachita, on the bayou Siard, and contains five hundred and sixty arpens and one-half arpent; and is described, fixed, and designated by the following metes and bounds: beginning at a black oak, standing on the bank of the bayou de Siard, being the upper corner of a tract of land belonging to John F. Girod, which he bought of Mr. Barney; and running thence up the said bayou, with its meanders, fifteen arpens or 150 poles, to a sassafras marked with three chops and ×, also standing on the bank of said bayou; which lines, when reduced to straight lines, will make fifteen and one-half arpens; thence south 57° east, 329 poles, with Thomas Patten's line, to a stake; thence north 39° east, 149 poles, to a stake; thence north 60° west, 355 poles, with the line of John F. Girod, to the beginning.

Your petitioners represent that no person is in possession of either of said tracts of land, or of any part or portion of them, and that the United States are the sole adverse claimants thereof; petitioners are informed that the validity of the aforesaid grant or concession, made as aforesaid to the Baron de Bastrop, has at several times been examined and inquired into by boards of commissioners appointed under authority of the United States for such purposes, and that some of said boards have reported favorably and others unfavorably of said grant; the premises considered, your petitioners pray that in pursuance of an act of Congress, approved 26th May, 1824, entitled "an act enabling claimants to lands within the limits of the State of Missouri and territory of Arkansas to institute proceedings to try the validity of their claims," and of the act of Congress approved 17th June, 1844, entitled "an act to provide for the adjustment of land claims within the States of Missouri, Arkansas, and Louisiana, and in those parts of the States of Mississippi and Alabama south of the 31st degree of north latitude, and between the Mississippi and Perdido rivers," the United States district attorney, in and for the district and State of Louisiana, may be cited to appear and answer on behalf of the United States the prayer of this petition; and that your honorable court will examine into the validity of the title and claims herein set forth by your petitioners, and that after due investigation it may be decided, adjudged, and decreed your petitioner's claim and title to the aforesaid two several tracts

of land herein set forth and described, are good and valid against the United States of America; and your petitioners further pray for all such other and general relief as justice and equity may require; and they will ever pray, &c.

(Signed,) J. W. GURLEY,
(Signed,) THOMAS GIBBS MORGAN,
Solicitors.

Doc. A, annexed to and made part of petition.

(For plat see original, page 4.)

Doc. B, annexed to and made part of petition.

(For plat see original, page 5.)

I certify, that on the request of the honorable Henry Bry, judge of the parish of Ouachita, I have surveyed for John W. Gurley, esquire, a tract of land situated on both sides of the river of Beef, in the parish aforesaid, (being part of a tract of land granted to the Baron of Bastrop by the Spanish Government,) beginning at a red oak tree, marked with the letter A, XVIII, and commonly called the eighteen mile tree, and running from thence by part of the said grant, said to belong to General John Adaire, north thirty-three degrees west, three thousand nine hundred and thirty-one perches, (French measure,) to an ash tree marked G, then south fifty-two degrees west, one thousand and twenty perches and five-tenths of a perch to a gum tree marked G; then south thirty-three degrees east, three thousand nine hundred [and] thirty-one perches to a red oak marked G, standing on the southeast boundry line of the survey of said grant; then with the said boundary line north of fifty-two degrees east, one thousand and twenty perches and five-tenths of a perch to the beginning, containing forty thousand arpens, agreeably to the measure of Paris, 17th March, 1808.

(Signed,) HENRY CASSEDES,
Deputy surveyor.

[SEAL.] I certify the foregoing to be a true copy of the original on file in my office. New Orleans, 31st March, 1846.

(Signed,) LOUIS T. CAIRE,
Not. Pub.

And thereupon, on the thirteenth day of June, A. D. 1846, was issued from the clerk's office the following

Citation.

United States district court, sitting in and for the district of Louisiana, to the marshal for the district of Louisiana, or his lawful deputy, greeting:

You are hereby commanded to summon Solomon W. Downs, esq., United States district attorney, to appear before the honorable judge of the district court of the United States, sitting in and for the district of Louisiana, at a district court to be holden at New Orleans on the first Monday of July, 1846, then and there to answer a petition in chancery, filed against the United States, wherein Joseph Grafton and wife are petitioners, and the United States is defendant.

Herein fail not, and have you then and there this writ, with your endorsement thereon how you have executed the same.

Mem.—The defendant is to enter his appearance in the above entitled cause in the clerk's office on or before the first Monday of July, 1846, otherwise the petition may be taken pro confesso.

Witness the honorable T. H. McCaleb, judge, this thirteenth day of June, New Orleans, 1846, and 70th year of American independence.

(Signed,) L. E. SIMONDS,
D'y clerk.

Marshal's return.

Received, this 15th day of June, 1846, and on the same day of June, 1846, served copies of the within citation, plaintiff's petition and documents annexed, on the within named the United States, in the manner following, to wit, by handing the same to S. W. Downs, esq., district attorney, in person, at New Orleans.

Returned the same into court the 15th June, 1846.

For WM. F. WAGNER,
U. S. marshal,
J. H. RINEHART,
D'y U. S. marshal.

And afterwards, to wit, on the twenty-sixth day of November, A. D. 1846, the United States, defendants, appeared by their attorney, and filed the following

Answer.

GRAFTON
vs.
THE UNITED STATES.

In the district court of the United States, for the district of Louisiana.

The defendants now come by their attorney, and for answer to plaintiff's petition say, that they deny all and singular the facts and allegations therein contained.

Wherefore they pray to be hence dismissed with costs.

(Signed,) THOMAS J. DURANT,
Att'y U. S.

No 2 Dec 28 — Dec 14 — P. Chas Thales Esq to map [illegible] Dpon 4.
the States to Virginia

[illegible] annexed to the Medn part of Petition

And afterwards, to wit, on the tenth day of March, A. D. 1849, was, by the plaintiffs, filed in court the following

Replication.

To the honorable the judge of the district court of the United States, in and for the district of Louisiana.

Joseph Grafton and Anna M. Gurley, his *his* wife, for replication to the answer filed by the United States, in the matter of said Grafton and wife vs. the United States, respectfully represents, that these replicants, reserving all objections, exceptions, &c., say that they do, and ever will, maintain and prove their said bill to be true and sufficient in law, and that the answer of said defendant is insufficient in law to be replied to. All which matters and things this replicant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by his bill he hath already prayed.

(Signed,) T. G. MORGAN,
J. W. GURLEY,
Solicitors for complainants.

And further at the same, being the February, 1849, term of the court, to wit, on the twelfth day of March, 1849, were had and duly recorded in the minutes of the court the following proceedings:

Trial and submission.

February term, 1849. Monday, March 12th, 1849. Present, hon. Theo. H. McCaleb.

os. Grafton and Wife
vs.
The United States. } No. 29.

This cause came on to be heard to-day; T. G. Morgan and J. W. Gurley, esqrs., solicitors for the complainants, and the United States district attorney for the defendants, appearing. Evidence was adduced, the greater portion thereof being drawn from the records in the case of the cities of Philadelphia and New Orleans *versus* the United States, No. 21 of the docket, when the case was taken under advisement by the court.

And be it also remembered, that the documents offered in evidence by the plaintiffs on the trial, and submitted to the court, are enumerated in the following

List of evidence, filed for reference March 12th, 1849.

United States district court.

Grafton and Wife
vs.
The United States.

List of evidence offered by plaintiffs in the above cause.

82, 83. 1o. Plat and copy of survey by Trudeau.
78, 79. 2o. Copy and translation of Bastrop grant.
84, 85. 3o. Petition of Bastrop and order of Carondelet.
86. 4o Copy and translation of grant of six toises to Bastrop.
95, 96. 5o. Letter and translation from Carondelet to Filhiol, 2d April, 1795.
99, 100. 6o. Letter and translation from Rendon to Filhiol, 30th October, 1795.
97, 98. 7o. Letter and translation from Carondelet to Filhiol, 2d June, 1796.
103, 104. 8o. Letter and translation from Filhiol to Maison Rouge, 12th September, 1796.
101, 102. 9o. Letter and translation from
108, 109. 10o. Decree of Spanish court of Madrid, requiring the fiscal to annul the transfer made by Bastrop to Morehouse, 22d July, 1802, and translation.
87, 88. 11o. Copy and translation of grant to Rogers in 1799.
57. 12o. Deposition of Louis Bouligny, to prove the introduction of families by Bastrop and the building of a grist and saw mill.
81. 13o. Deposition of David Stewart, taken under commission to prove the same facts.
89. 14o. Deposition of Grammont Filhiol, taken under commission to prove same facts.
93, 94. 15o. Deed from Bastrop to Morehouse, and certificate of V. F. Tejeiro, dated 25th January, 1804.
5. 16o. Covenant between Bastrop, Morehouse, and Lynch.
4. 17o. Cassidy's survey and plat of Bastrop and Morehouse's lands.
18o. C. Partition between Morehouse and Livingston.
19o. D. Sale from Morehouse to J. W. Gurley of 30,000 acres.
20o. E. Sale from Morehouse to Wm. Dewees of 10,000 acres.
21o. F. Sale from Wm. Dewees to J. W. Gurley of 10,000 acres.
22o. B. Cassidy's survey of the Gurley tract.
22. 23o. Deed of trust from G. Y. Morehouse to Wm. Griffith.
24. G. Sale from Wm. Griffith to Jos. Saul, curator of J. W. Gurley's estate, of 560½ arpens.
25. A. Plat and subdivisions of the Bastrop grant.
26. H. Deposition of J. W. Gurley, as to heirship of A. M. Gurley Grafton.

N. B. The figures referred to are endorsed on the several documents in pencil in case No. 21 of the docket; the rest are of record in case 29, herein.

Nota bene. The documents marked 1o, 2o, 3o, 4o, 5o, 6o, 7o, 8o, 9o, 10o, 11o, 12o, 13o, 14o, 15o, 16o, 17o, and 23, belong to the record of the case of the cities of Philadelphia and New Orleans vs. the United States, No. 21, and are copied at length in the transcript of that case.

Those marked 18o, 19o, 20o, 21o, 22o, 24o, 25o, and 26o, are as follows:

18*o*. *Doc. C.—Partition.—Copy.*

Whereas by an agreement made and entered into on the fourteenth day of May, in the year of our Lord one thousand eight hundred and five, and in the twenty-ninth of the American independence, before Peter Pedesclaux, notary public in the city of New Orleans, by the Baron de Bastrop, of the first part, Charles Lynch, of the second part, and Abraham Morehouse, of the third part, each of the parties being personally present; in which contract, signed and duly recorded, it is agreed between and by the several parties under divers stipulations to be performed, that the said Abraham Morehouse should be entitled to hold in his own right four undivided tenth parts of a certain tract of land, conceded by the Spanish government to the said Baron de Bastrop, situated in the district of Ouachita, containing twelve leagues square; and the said Charles Lynch should hold and be entitled to the remaining six-tenth parts, the same to be divided by a line to be agreed on by the parties; and whereas it now appears by a judgment of the superior court of the Territory of Orleans, rendered on the seventh day of March, eighteen hundred and six, in favor of Edward Livingston, and against said Charles Lynch; and likewise by an assignment and release made and recorded before the signing of these presents from the said Charles Lynch, by his attorney in fact, John Adair, to Edward Livingston, that the said Edward Livingston is now entitled to six undivided tenth parts of said grant, under the stipulation of being bound to perform all the conditions which the said Lynch was bound to perform by the aforesaid recited agreement.

The parties have entered into the following division, to wit: The said Edward Livingston, by his attorney in fact, Augustus Davesac de Castra, doth to himself, his heirs, executors, &c., &c., release and forever quit claim to the said Abraham Morehouse, his heirs, executors, &c., &c., for four-tenth parts of said grant of twelve leagues square, which four tenth parts contain by estimation four hundred thousand arpens, and bounded as follows: Beginning at the eighteen mile tree from the letter D, on the eastern line of the survey of said grant made by Henry Cassidy, authorized surveyor on the part of the United States to survey all land in this district; thence running north thirty-three *decree* west, until it crosses the bayou Barthelemy on its most western banks; thence running to the river Ouachita in such direction as will include the quantity. And the said Abraham Morehouse does, for himself, his heirs, &c., release and forever quit claim to the said Edward Livingston, his heirs, executors, and assigns, the remaining six-tenth parts of the said grant; which six-tenth parts contain by estimation six hundred thousand arpens under the condition of the aforesaid recited agreement, and bounded as follows, to wit: Beginning at the aforesaid eighteen mile tree, and running with the line aforesaid until it strikes the Ouachita, and round with the line of the survey of said grant, made by the said Henry Cassidy, it being understood and intended that Edward Livingston shall hold all the lands within the grant

north and east of the said division line; and the said Abraham Morehouse all the lands on the south and west of the same, as may appear more fully by a reference to the said map of the said grant, executed by the said Cassidy, in which the lines of division here referred to are marked.

As witness our hands and seals.

(Signed) ABRAHAM MOREHOUSE, [SEAL.]
EDWARD LIVINGSTON,

By his attorney in fact,
AUGUSTUS DAVESAC DE CASTRA.

The 28th 7'bre, 1807.

Witnesses present—
J. L. HENDERSON,
P. CASSIDY,
HY. CASSIDY.

Acknowleged before me; therefore it is recorded in my office.
(Signed) H. BRY, *J. P.* [SEAL.]

I do certify the present to be a true copy of the orignal recorded in my office.

H. BRY, *J. P.*

Document annexed to the foregoing petition.

By William C. C. Claiborne, governor of the Territory of Orleans.

These are to certify that Henry Bry, whose name is subscribed to the instrument of writing hereunto annexed, is judge in and for the parish of Ouachita, and duly qualified and commissioned.

Given under my hand and the seal of the Territory, at New Orleans, [SEAL.] this 2d day of May, 1808, and in the thirty-second year of the independence of the United States.

(Signed) WILLIAM C. C. CLAIBORNE.

Endorsement on document C.

Agreement of division of Bastrop grant, 28th September, 1807.

Judgment against Charles Lynch in favor of Livingston, the land being divided between A. Morhouse & Livingston, recorded in Bry's office 28th of September, 1807.

19o. Doc. D.

Sale of 30,000 *acres, by A. Morehouse to J. W. Gurley, April* 26, 1805.

Know all men by these presents, that I, Abraham Morhouse, of the port of Ouachitas, Territory of Orleans, do really and effectually sell

unto John W. Gurley, esq., attorney at law of the city of New Orleans, an undivided tract or parcel of land, situated in the said port of Ouachitas, to contain thirty thousand acres, agreeable to the customary measure heretofore established in the province of Louisiana, to be laid off in a square, and as nearly so as the water course will permit, the said thirty thousand acres to be taken from a certain tract of land of twelve leagues square, granted by the Spanish government to the Baron of Bastrop; and two-thirds of said twelve leagues square was conveyed by the said Baron of Bastrop to the said Morhouse, by deed bearing date the twenty-fifth day of January, one thousand eight hundred and four. And as the Baron of Bastrop has a mortgage on his estate, in favor of Charles Stephen Peter Wante, for the sum of forty-five thousand and ninety-one dollars sixty-two cents and a half, as per act received before me, bearing date the fifteenth of May, one thousand eight hundred and one, the parties have agreed, and do by these presents agree, to warrant the notary from any claims whatsoever that may actually exist, or heretofore may exist on said lands, express clause, unless which these presents would not have had effect. The above thirty thousand acres of land sold with all their entries, going outs, uses, customs, rights and services, for and in consideration of the sum of fifteen thousand Mexican dollars, the receipt of which sum I do hereby acknowledge, and as the delivery is not made in presence of the notary, I renounce to the right of exception for the non numerata pecunia, and grant formal receipt. By means of which acknowledgment I abandon all rights of property, possession, power of use, dominion, and sovereignty, that I had on the said undivided tract or parcel of land, and the whole I transfer and give over to the purchaser, his heirs, executors, administrators and assigns, to the end that he may possess, sell, bargain, change, or alienate the same as he may think fit, by virtue of the public instrument which I grant in his favor as a sign of real delivery, and by which he is proved to have acquired the possession, without need of any other proof, of which I relieve him; and I bind myself to the eviction, security, and responsibility of this sale in due form of law. And I, the aforesaid John W. Gurley, being here present, accept in my favor this said bill of sale, acknowledging herein the purchase of the said undivided tract, or parcel of land, in the manner sold unto me, and acknowledging the same as delivery to my satisfaction, hereby granting formal receipt; and to the due fulfilment of the premises each party have bound themselves in due form of law.

In testimony whereof these presents are done and passed, at the city of New Orleans, on the twenty-sixth day of April, in the year of our Lord one thousand eight hundred and five, and in the twenty-ninth of American independence.

I, the notary, certify to know the parties, who have signed with and in presence of me, the notary, and the witnesses, John Bte. Ramirez and Joachin Lozano, citizens here present.

(Signed) A. MORHOUSE,

J. W. GURLEY,
JN. BTE. RAMIREZ,
JOAQN. LOZANO,
PIERRE PEDESCLAUX, Ne.

I certify the foregoing to be a true copy of the original act, extant on my current notarial register.

[SEAL.] In faith whereof I grant these presents, under my signature and the impress of my seal of office.

New Orleans, 6th November, 1845.

(Signed) LOUIS T. CAIRE,
Not. Pub.

20o. Doc. E.

Sale of 10,000 *acres, by Morehouse, to Wm. Dewees, May* 15, 1805.

Know all men by these presents, that I, Abraham Moorhouse, for and in consideration of the sum of five thousand dollars, to me paid in hand, paid by William Dewees, of the city of New Orleans, the receipt whereof I do hereby acknowledge, have granted, bargained, sold, assigned, transferred, and set over, and by these presents do grant, bargain, sell, assign, transfer, and set over, unto the said William Dewees, and his heirs and assigns forever, a certain tract or parcel of land, situate in the district of Ouachita, in the Territory of Orleans, containing ten thousand acres, being part of a larger tract or parcel of land of twelve leagues square, formerly granted to the Baron de Bastrop by the Spanish government, and being part also of that part and portion of it which shall fall to the said Abraham Moorhouse, according to the agreement entered into the day of this present month, between Charles Lynch esq., of the State of Kentucky, the said Baron de Bastrop, and the said Moorhouse; to have and to hold the aforesaid tract of land of ten thousand acres to him, the said William Dewees, his heirs and assigns forever; and I, the said Abraham Moorhouse, my heirs, executors, and administrators, do covenant, promise, and agree, with the said William Dewees, that I will at any time or times hereafter make *suit*, further assurances, transfer, or deed as may be deemed necessary to the full and entire conveyance of the said tract of land after the same shall have been surveyed, and a portion of the same shall have been made between the said Dewees and Moorhouse, and generally to do and perform all such acts as may be deemed necessary for the more complete conveyance of the land hereby granted.

In witness thereof I have hereunto set my hand and seal the fifteenth day of May, one thousand eight hundred and five, 1805.

(Signed) A. MOORHOUSE. [L. S.]

Sealed and delivered in the presence of—

(Signed) HENRY BROWN,
(Signed) R. D. SHEPPERD.

(Signed) JOHN LYND, *N. P.*

I, the undersigned, successor in office of John Lynd, notary public, duly commissioned and sworn for this city and parish, do hereby certify, that the foregoing is a true copy of the original act on file and of record in my office. In faith whereof I grant these presents under my signature and the impress of my notarial seal, at New Orleans, this sixteenth day of November, eighteen hundred and forty-six, (1846.)

[SEAL.] (Signed) THEO. GUYOL,
Not. Pub.

21o. Doc. F.

Sale of 10,000 *acres by Wm. Dewees to Jno. W. Gurley, October* 17*th*, 1807.

TERRITORY OF ORLEANS,
City of New Orleans.

Know all men by these presents, that I, William Dewees, of the city of New Orleans, counsellor at law, for and in consideration of the sum of four thousand dollars, lawful money of the United States of America, to me, the said William Dewees, in hand paid by John Ward Gurley, of the said city of New Orleans, counsellor at law, the receipt whereof is hereby acknowledged, have, and by these do grant, bargain, sell, assign, transfer, and set over, unto the said John Ward Gurley, ten thousand undivided acres of land in Ouachita, as conveyed to said William Dewees, in and by a certain deed [of] conveyance or bill of sale executed by Abraham Moorhouse, on the fifteenth day of May, one thousand eight hundred and five, with all the appurtenances whatsoever, being an undivided part of a certain tract or parcel of land of twelve leagues square, formerly granted to the Baron of Bastrop by the Spanish government, situate in the district of Ouachita, in the Territory of Orleans, and being part also of that part or portion of it which may or shall fall to the said Abraham Moorhouse, according to the agreement entered into the day of May, one thousand eight hundred and five, between Charles Lynch, esq., of the State of Kentucky, the said Baron de Bastrop, and the said Abraham Moorhouse, the said ten thousand acres of land hereby sold to the said John Ward Gurley, by the said William Dewees, being hereby warranted by the said William Dewees to be at present, and that the same shall prove, on a division or partition of the said tract of twelve leagues square, to be of an average quality with the whole tract of the said twelve leagues of land, as above mentioned and described: to have and to hold the said ten thousand acres of land hereby granted by the said William Dewees to the said John Ward Gurley unto him, the said John Ward Gurley, his heirs, executors, administrators, and assigns forever; and I, the said William Dewees, for myself, my heirs, executors, and administrators, do hereby covenant and agree, to and with the said John Ward Gurley, his executors, administrators, and assigns, that at the execution of these presents the premises are freed from and cleared of all claims, incumbrances, or

demands whatsoever under me, the said William Dewees, my heirs, executors, administrators, and assigns, firmly by these presents.

In witness whereof I have hereunto set my hand and seal, the seventeenth day of October, in the year one thousand eight hundred and seven; the parties being satisfied there is no mortgage.

W. DEWEES. [L. S.]

Sealed and delivered in the presence of—
P. L. B. DUPLESSIS,
ELIPHALET FITCH.

On this seventeenth day of October, one thousand eight hundred and seven, before me, Eliphalet Fitch, a notary public for the city of New Orleans, personally appeared the said William Dewees, and acknowleged the foregoing instrument in writing to be his free act and deed.

In testimony whereof I have hereunto set my hand, and affixed my notarial seal, the day and year aforesaid.

[L. S.]

ELIPHALET FITCH,
Notary Public.

I certify *to* foregoing to be a true copy of the original act extant in my current notarial register.

In faith whereof I grant these presents, under my signature and the impress of my seal of office.

[SEAL.] New Orleans, 31st March, 1846.

LOUIS T. CAIRE,
Notary Public.

Pardevant Philippe Pedesclaux, notaire public pour la ville et paroisse de la Nouvelle Orléans, et en présence des témoins ci-après nommés.

Fut présent Mr. Joseph Saul, demeurant en cette ville, lequel a par ces présentes, déposé pour minute au notaire soussigné. 1o. Un contrat de vente passé devant Eliphalet Fitch, notaire en cette ville, de dix-sept Octobre, mil huit cent sept, par Mr. William Dewees à Mr. John Ward Gurley, de dix mille arpens de terre indivis, situés dans le Ouachita, pour et moyennant la somme de quatre mille piastres comptant. 2o. Et un procès verbal d'arpentage, accompagné du plan de quarante mille arpens de terre, situés dans le Ouachita, en date du dix-sept Mars, mil huit cent huit, fait par Henry Cassedy, dep'ty arpenteur.

Lesquelles pièces sont demeurées ci-annexées pour recours.

Fait et passé en l'étude, à la Nouvelle Orléans, le seize Decembre, mil huit cent dix-huit, en présence des Sieurs Michel Fourcisy et Vincent Bilote, témoins qui ont signé avec le comparant et le dit notaire.

(NOTA.)—Les signatures manquent à la minute.

Pour copie conforme à l'original resté en mon étude pour recours; en foi de quoi j'ai signé les présentes et y ai apposé le sceau de mon office.
[SEAL.]
Nouvelle Orléans, 31st March, 1846.
(Signed) LOUIS T. CAIRE,
Notary Public.

22o. Document B. Cassidy's survey of the Gurley track. (Plat already copied on folio 5th of this record.)

24o. *Document G. Sale of* 560½ *arpens by William Griffith to Joseph Saul, curator of J. W. Gurley's estate, March* 29, 1817.

Before me, Oliver J. Morgan, parish judge, in and for the parish of Ouachita, and State of Louisiana, duly authorized by law to perform notarial acts, on this twenty-ninth day of March, one thousand eight hundred and seventeen, at the parish aforesaid, personally came Thos. C. Lewis, as attorney in fact of William Griffith, esq , of the town of Burlington, in the State of New Jersey, trustee of the estate of Abigail Y. Morehouse, widow of Abraham Morehouse, deceased, and of the estates of said Abagail and George Y. Morehouse, as heirs and legal representatives of Andrew Y. Morehouse, deceased, whose powers of trusteeship and attorney aforesaid are of record in my office, of the one part; and Thomas Patten, as attorney in fact for Joseph Saul, acting as curator of the estate of John W. Gurley, deceased, as appears by letters written from said Joseph Saul, as curator aforesaid, to the said Patten, on the other part.

Whereas, in consequence of a suit now pending in the seventh district court, in the parish of Ouachita aforesaid, on a note of hand given by the said A. Morehouse, deceased, on the 26th day of November, one thousand eight hundred and five, to the said John W. Gurley, which suit the said Patten, as attorney aforesaid, having agreed to dismiss and acknowledge, satisfied the said Thomas C. Lewis, as attorney aforesaid, hereby conveys in fee simple to the said Joseph Saul, as curator aforesaid, and to his and their heirs and assigns, a certain tract of land lying and being on the bayou de Siard, in the parish aforesaid, united and bounded as follows, beginning at a black oak standing on the bank of the bayou de Siard, being the upper corner of a tract of land, belonging to Jno. T. Girod, which he bought of Wm. Barney, and running thence up the said bayou with its meanders, fifteen arpens, or one hundred and fifty poles to a sassafras, marked with three chops and ⋈, standing on the bank of the said bayou, thence again with the meanders of said bayou ten poles or one arpent to a W. oak, marked with three chops and ⋈, also standing on the bank of said bayou, which lines when reduced to straight lines will make fifteen and an half arpens; thence S. 5 7° E. three hundred and ninety poles, with Thomas Pattens' line to a stake; thence N. 39° E. one hundred and forty poles to a stake; thence N. 60° W. three hundred and fifty-five poles with the line of Jno. F. Girod to the begin-

ning, so as to include five hundred and sixty and a half arpens, agreeably to the plat affixed to this title; to have and to hold unto him, the said Joseph Saul, as curator aforesaid, the said tract of land, with all and singular the appurtenances thereto belonging, with all the right, title, interest, claim or demand, of, in, and to the same, of him, the said Abraham Morehouse, or his heirs; and the said Wm. Griffith, as trustee aforesaid, doth covenant and agree, with the said Joseph Saul, as curator aforesaid, his or their heirs or assigns, that the premises hereby granted, bargained, and sold, now are, and forever shall be, free and clear of all and every encumbrance whatever, done or suffered to be done by him, the said William Griffith; and further covenants, as curator aforesaid, (as far as the law will warrant a trustee,) to warrant and forever defend the premises aforesaid against all the claim or claims of all and every person whatever.

In testimony whereof the parties have signed, passed, acknowledged, and accepted the presents; and the witnesses, with me, the said parish judge, have signed our names, and to which I have affixed my seal of office, the day and the year before written.

THOMAS C. LEWIS,
Attorney in fact for Wm. Griffith, as within mentioned.
JOSEPH SAUL,
Curator of the estate of John W. Gurley.
By his attorney in fact, THOMAS PATTEN.
OLIVER J. MORGAN,
Parish Judge.

his
Test: JNO. T. CABEEN BAPTISTE ⋈ AMBLETON.
mark ordinary.

I certify the foregoing to be a true and correct copy of the original on record in my office.

In testimony whereof I have hereunto signed my name, and affixed my seal of office, this the 26th day of June, A. D. 1845.
[SEAL.] (Signed) J. C. SCARBOROUGH,
Parish Judge.

25o. Document A. Plat and subdivisions of the Bastrop grant. (Plat already copied on folio 4th of this transcript.)

26o. *Document H. Deposition of J. W. Gurley, as to heirship of A. M. Gurley Grafton.*

United States district court for Louisiana.

JOSEPH GRAFTON and Wife
vs.
The United States. } No. 29.

Testimony taken in open court, Monday, March 12th, 1849.

John W. Gurley, esq., being duly sworn, deposes, that he is a

nephew of John Ward Gurley, father of Anna M. Gurley, one of the complainants herein; that the said Anna M. Gurley is the only child left by the said J. Ward Gurley, a fact known to witness on information derived from his father and said uncle; and that she is now the wife of Joseph Grafton, first complainant herein.

No cross examination.

(Signed) J. W. GURLEY.

Attest:

(Signed) ROBERT M. LUSHER,
Deputy Clerk.

Close of evidence.

And afterwards, at the May term, A. D. 1849, to wit, on the 26th day of May, 1849, was rendered and recorded on the minutes, and on the 30th day of May, 1849, duly engrossed and signed, in the words following:

The judgment of the court.

May term, 1849. Saturday, May 26th, 1849.

Present, honorable Theo. H. McCaleb.

The court this day rendered the following judgment:

Jos. Grafton and Wife
vs. } No. 29.
The United States.

This cause came on to be heard at the February term, to wit, on the 12th March last, upon the petition, answer, replication, depositions, exhibits, and proofs of record, and was argued by counsel, and submitted to the court.

And the court having maturely considered the same, and being satisfied from the evidence that a concession or grant of twelve leagues square of lands situated on the waters of the river Ouachita, and the bayous Bartholomew and Liard or Siard, and their branches, in the province of Louisiana, was made in the years 1796 and 1797, by the Baron de Carondelet, the governor general of the said province, then under the dominion of the crown of Spain, to the Baron de Bastrop, a resident of said province, which grant is commonly known as the "Bastrop grant," and the metes and bounds whereof are designated, fixed, and defined in the map of figurative plan prepared and executed on the 14th June, 1797, by Don Carlos Trudeau, surveyor general of said province, offered in evidence by the plaintiffs on the trial of this cause; and being further satisfied that the petitioner, Anna M. Gurley Grafton, is the true and legal owner, by title regularly derived from the said Baron de Bastrop, of such portions of said grant as are claimed in her petition, and being moreover satisfied that said grant was and is a

good, lawful, and valid grant, made in due form and by the proper authorities under the Spanish government to the said Baron de Bastrop, and that the same was and is protected and secured to him as his private property by the treaty made between the United States and the French Republic, on the 30th day of April, 1803, as well as by the laws of nations and the Constitution and laws of the United States.

Now, therefore, acting under and by virtue of the act of Congress of 26th May, 1824, entitled "an act enabling the claimants to lands within the limits of the State of Missouri and Territory of Arkansas, to institute proceedings to try the validity of their claims;" and also the act passed on the 17th day of June, 1844, entitled "an act to provide for the adjustment of land claims within the States of Missouri, Arkansas, and Louisiana, and in those parts of the States of Mississippi and Alabama, south of the thirty-first degree of north latitude, and between the Mississippi and Perdido rivers," this court doth order, adjudge, and decree, and it is hereby ordered, adjudged, and decreed, that the petitioner, Anna M. Gurley Grafton, is the true and lawful owner of and has good title against the United States, the defendants, in and to all the lands and hereditaments claimed by her in her said petition, which lands are described as follows:

Two certain tracts of land situated in the now State of Louisiana.

The first and larger of said tracts, lying on both sides of the river Beef, (or bayou Bœuff,) being partly in each of the now parishes of Morehouse and Carroll, and containing forty thousand superficial acres, beginning at a red oak tree, marked with the letter A, XVIII, and commonly called the eighteen mile tree, and running thence by part of the said grant to Baron de Bastrop, said to belong to General John Adair, north thirty-three degrees west, three thousand nine hundred and thirty-one perches, (French measure,) to an ash tree marked G; thence south fifty-two degrees west, one thousand and twenty perches and five-tenths of a perch, to a gum tree marked G; thence south thirty-three degrees east, three thousand nine hundred and thirty-one perches, to a red oak marked G; standing on the southeast boundary line of survey of said grant; thence with said boundary line north fifty-two degrees east, one thousand and twenty perches and five-tenths of a perch to the beginning, as described and designated on a map or survey executed on the 17th March, 1808, by Henry Cassidy, U. S. deputy surveyor, which map is marked exhibit B.

The second and smaller of said tracts of land, lying entirely within the parish of Ouachita, on the bayou Siard, and containing five hundred and sixty arpens and one half arpent, beginning at a black oak, standing on the bank of the bayou de Siard, being the upper corner of a tract of land belonging to John F. Girod, which he bought of Mr. Burney, and running thence up the said bayou, with its meanders, fifteen arpens, or 150 poles, to a sassafras, marked with three chops and X, also standing on the bank of said bayou; which lines, when reduced to straight lines, will make fifteen and one-half arpens; thence

south fifty-seven degrees east, three hundred and twenty-nine poles, with Thomas Patten's line, to a stake; thence north thirty-nine degrees east, one hundred and forty-nine poles, to a stake; thence north sixty degrees west, three hundred and fifty-five poles, with the line of John F. Girod, to the beginning.

It is further ordered, adjudged, and decreed, that in case said lands, so claimed by the plaintiffs in their said petition, or any part or portions thereof, shall have been sold or otherwise disposed of by the United States, said plaintiffs shall be, and they are hereby, authorized to enter, in any land office in the State of Louisiana, in parcels conformable to sectional divisions and subdivisions, a like quantity of public lands, after the same shall have been offered at public sale; and further, that scrip be issued in favor of the petitioner, Anna M. Gurley Grafton, in conformity with this decree, and in pursuance of the acts of Congress above recited.

Judgment rendered May 26th, 1849. Judgment signed May 30th, 1849.

(Signed) THEO. H. McCALEB, [SEAL.]
U. S. Judge.

And further, at the same term, and on the said 30th day of May, A. D. 1849, was moved for in open court, granted, and duly recorded, the following

Order of appeal.

May term, 1849—Wednesday, 30th May, 1849.

Present, honorable Theo. H. McCaleb.

JOSEPH GRAFTON and Wife
vs.
THE UNITED STATES. } No. 29.

On motion of Logan Hunton, attorney of the United States for the district aforesaid, and of Thomas J. Durant on the same behalf, and on giving the court to understand and be informed that the United States are injured and aggrieved by the judgment of this honorable court, rendered against them at this term, in the matter of Joseph Grafton and Wife vs. the United States, and desire to appeal therefrom:

It is therefore ordered by the court that an appeal be allowed in favor of the United States from the judgment aforesaid, returnable to the Supreme Court of the United States at the next term thereof, after the date of this order.

And on the 27th October, 1849, was filed by the parties, in the clerk's office, the following agreement, adjourning return day of appeal; and on the 27th October, 1849, was the same renewed, as hereinafter appears.

EASTERN DISTRICT OF LOUISIANA,
U. S. district court.

JOSEPH GRAFTON and Wife
vs.
THE UNITED STATES. } No. 29. Land docket.

It is herein agreed between the party plaintiff and the defendants, that the return day of the appeal, hitherto granted said defendants and now of record, and made returnable on the first Monday of December, 1849, into the Supreme Court of the United States, be, and it is hereby, by mutual consent and understanding, extended until the first Monday of December, 1850, or the term of the said Supreme Court next after that opening on the first Monday of December next.

(Signed) J. W. GURLEY,
Of counsel for plaintiffs.

(Signed) L. HUNTON,
U. S. attorney.

New Orleans, 27th October, 1849.

Attest: ROB'T M. LUSHER,
Deputy Clerk.

New Orleans, October 30th, 1850. By mutual consent, the return day of the appeal above mentioned is further extended until the December term, 1851, of the Supreme Court.

(Signed) J. W. GURLEY,
Attorney for plaintiffs.

(Signed) L. HUNTON,
U. S. attorney.

And finally, on the 3d November, 1851, was filed the following

Agreement as to transcript.

In the district court of the United States, for the district of Louisiana.

JOSEPH GRAFTON and Wife
vs.
THE UNITED STATES. } No. 29.

In this case it is agreed that in making up the record of appeal for the Supreme Court of the United States, only the documents actually filed with the petition, or on trial, shall be copied into the record. The documents and testimony used and on file in the suit of the Mayor, Aldermen, and Inhabitants of New Orleans and Philadelphia vs. the United States, No. 21, of the land docket of this court, shall be used in said Supreme Court, as if actually copied into the record of this cause, and shall be held and taken as part thereof, the copying

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of the same into the record of the case being dispensed with by this agreement.

(Signed) J. W. GURLEY,
Attorney for plaintiffs.

(Signed) LOGAN HUNTON,
U. S. Attorney.

New Orleans, November 1st, 1851.

UNITED STATES OF AMERICA,
Eastern district of Louisiana.

I, Needler R. Jennings, clerk of the district court of the United States, sitting at New Orleans, in and for said district, do hereby certify, that the foregoing thirty-three folios, inclusive of plats or diagrams on folios 4 and 5, contain and form a true, faithful, correct, and complete transcript of all the proceedings, process, pleadings, documents, and other matters on file and of record in a certain cause in chancery, (quasi,) wherein Jos. Grafton and wife are complainants, and the United States of America are defendants, No. 29 of the land docket of said court.

In testimony whereof I have hereunto set my hand, and affixed the seal of said court, at the city of New Orleans, this twenty-
[SEAL] second day of November, one thousand eight hundred and fifty-one, and seventy-sixth year of American independence.

N. R. JENNINGS, *Clerk*,
By ROBT. M. LUSHER,
D'y clerk U. S. district court, eastern dist. of Louisiana.

I, Theodore H. McCaleb, judge of the district court of the United States, for the eastern district of Louisiana, do certify, that N. R. Jennings, who, by his duly and legally appointed and qualified deputy, Robt. M. Lusher, subscribed the above certificate, was, at the time of signing the same, and is now, the duly appointed and legally authorized clerk of said court; that full faith and credit are due and ought to be given to all his attestations as such clerk, and those of his said deputy, and that his above certificate is in due form of law.

(Interlineations as to deputy clerk approved.)

Witness hereto my hand and seal at New Orleans, this said 22d day of November, A. D. 1851.

THEO. H. McCALEB. [SEAL.]

The President of the United States of America, to Joseph Grafton and Anna M. Gurley Grafton, his wife, both of Massachusetts, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the first Monday of December next, pursuant to an order of appeal granted on the thirtieth day of May, 1849, by the district court of the United States, in and for the eastern district of Louisiana, in a certain cause in chancery, under the acts approved May 26th, 1824, and June